

Closed Session – June 6, 2005

At 5:48 p.m. the Board adjourned to closed session to consult with our attorney to consider and give instructions concerning a judicial action titled Maxton McDowell, Wanda McDowell, Claude Winslow, Barbara Winslow vs. Randolph county and McDowell Lumber Company, Inc. pursuant to NCGS 143-318(a)(3). Commissioners Holmes, Kemp, Frye, Lanier, and Davis were present, as well as County Manager Frank Willis, County Attorney Alan Pugh, Associate County Attorney Aimee Scotton, Planning Director Hal Johnson, Deputy Finance Officer Will Massie, Clerk to the Board Alice Dawson and Deputy Clerk to the Board Cheryl Ivey.

Alan Pugh said that the Plaintiffs had amended their complaint to include the Board of Commissioners' decision on May 2, 2005 to change the zoning district classification of the McDowell Lumber property to a Heavy Industrial/Conditional Use District.

Mr. Pugh distributed copies of the County's answer (filed June 3, 2005) to the amended complaint and briefed the Board on its contents. He said that the County's response is derived from the old common law version of a statute of limitations or "laches," such that the plaintiffs lived adjacent to defendant McDowell Lumber Company and its operations for more than 20 years prior to their initiation of this lawsuit and never lodged a formal complaint. Moreover, one plaintiff has sat on the County Planning Board since its inception and did nothing. According to the doctrine of "laches," the plaintiffs have sat on their rights too long.

The complaint also states that the Board of Commissioners committed procedural errors during the process by which it conducted the conditional use rezoning as if it were a purely legislative act. The County's response is *the "conditional use" designation on an application for any rezoning request within the jurisdiction of the County of Randolph is a voluntary act by any applicant to offer and add additional restrictions which the applicant requests be imposed on the use and zoning classification of the applicant's property for the purpose of protecting, enhancing, and making more compatible the use of the applicant's real property with that of adjacent land owners and the community in general. Applicants for a change in their zoning classification within the County of Randolph are free to apply for a rezoning classification without any conditions ("straight" rezoning), or zoning with additional conditions not required by the Unified Development Ordinance in that type of zone ("conditional use" rezoning) which conditions they voluntarily offer to be imposed on their property as an additional factor to be considered by the Board of County Commissioners in making its legislative decision on the request. This method of 'conditional use' modification of "straight" rezoning applications has been expressly approved by the Supreme Court of N.C. as a salutary tool providing for the practical application of land use regulations particularly in large jurisdictional areas more rural or mixed in use than traditional urbanized settings which have historically been the subject of municipal zoning ordinances, and to ameliorate the traditional strictures as to "contract zoning" and "spot zoning."*

*On motion of Davis, seconded by Kemp, the Board voted unanimously to return to regular session at 6:05 p.m.*

---

J. Harold Holmes, Chairman

---

Darrell L. Frye, Vice Chairman

---

Phil Kemp

---

Robert B. Davis

---

Arnold Lanier

---

Cheryl A. Ivey, Deputy Clerk to the Board